

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

ROBERT BERG,

Plaintiff,

- against -

M & F WESTERN PRODUCTS, INC.

Defendant.

Docket No. 6:19-cv-418

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Robert Berg (“Berg” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant M & F Western Products, Inc. (“M & F” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of copyrighted designs, owned and registered by Berg, a professional designer. Accordingly, Berg seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in Texas.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Berg is a professional designer having a usual place of business at 253 Highway 75 North, Suite B, Huntsville, Texas 77320.

6. Upon information and belief, M & F is a domestic business corporation organized and existing under the laws of the State of Texas, with a place of business at 1303 Holiday Drive, Sulphur Springs, Texas 75482. Upon information and belief M & F is registered with the Texas Department of State Division of Corporations to do business in the State of Texas.

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Designs

7. Berg created designs (the "Designs"). A true and correct copy of some of the Designs are attached hereto as Exhibit A.

8. Berg is the author of the Designs and has at all times been the sole owner of all right, title and interest in and to the Designs, including the copyright thereto.

9. The Designs were registered with the United States Copyright Office. See Exhibit A.

10. In December 2016 at the NRF retail trade show, a person by the name of Carry from M & F stopped by Berg's booth, who said that a person by the name of Mickey at M & F was interested in buying a range of designs for Mickey to use for M & F. Berg declined as he did not want his designs diluted by mass producing.

B. Defendant's Infringing Activities

11. Sometime after December 2016, M & F created their own products copying the Designs for their products and mass producing them. Some examples are attached hereto as Exhibit A.

12. M & F did not license the Designs from Plaintiff, nor did M & F have Plaintiff's permission or consent to use the Designs.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. M & F infringed Plaintiff's copyright in the Designs by reproducing and publicly displaying the Designs on the Website. M & F is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Designs.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

17. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

18. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Designs, pursuant to 17 U.S.C. § 504(c).

19. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant M & F be adjudged to have infringed upon Plaintiff's copyrights in the Designs in violation of 17 U.S.C §§ 106 and 501;
2. Defendant and its officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 17 U.S.C. § 501;
3. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
4. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
5. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
6. That Plaintiff be awarded pre-judgment interest; and
7. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
September 14, 2019

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